

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No. 1462 of 2021

Ramkrishna Nattuji Tayade and Others

Vs.

Chaya Sunil Chakranarayan and Others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Alok Daga, Advocate for the petitioners
Mr. M.G. Sarda, Advocate for the respondent No.1
Ms. T.H. Khan, A.G.P. for respondents No.2 & 3

CORAM : MANISH PITALE, J.

DATED : JUNE 14, 2021

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. By this Writ Petition, the petitioners have challenged the judgment and order dated 02/02/2021, passed by the Court of District Judge, Akola, whereby appeal against order filed by the respondent No.1 was allowed. As a consequence, an order passed by the Court of Joint Civil Judge (Senior Division), Akola (Trial court), rejecting an Application for temporary injunction was set aside and the Application was allowed in favour of respondent No.1.

3. The controversy between the parties pertains to the claims of the petitioners herein about right of way through the field of the respondent No.1

bearing Gat No. 58 to access their fields located in Gat Nos. 57 and 59 at Mouza Hingana Kumbhari District Akola. The petitioner No.1 had initiated a proceeding before the respondent No.3 – Tahsildar under Section 143 of the Maharashtra Land Revenue Code, 1966, claiming that a way to access his agricultural field at Gat No. 57 existed through Gat No. 58 belonging to the respondent No.1 and that since the said respondent had erected fence obstructing the said way, appropriate order was required to be passed against the respondent No.1. The petitioners No.2 and 3 had also initiated a proceeding under Section 5 of the Mamlatdars' Courts Act, 1906 against the respondent No.1 claiming that a right of way existed through his field bearing Gat No. 58 for access to their field located in Gat No. 59. The petitioners No.4 and 5 are co-owners of the said fields.

4. On 02/05/2019, the Tahsildar passed order under the provisions of the Mamlatdar's Courts Act, 1906 against the petitioners No.2 and 3. On 10/05/2019, the Tahsildar passed order in favour of the petitioner No.1 under Section 143 of the Code. Aggrieved by the said orders, rival parties approached the Sub-Divisional Officer, who by separate orders dated 15/01/2020 and 27/01/2020, set aside the said orders of Tahsildar and remanded the matter for fresh consideration.

5. Upon remand, the respondent – Tahsildar passed a common order dated 31/07/2020, holding in favour of the petitioners and directing the respondent

No.1 to remove the obstruction allegedly created by him to the right of way found to be available to the petitioners herein. At this stage, i.e. on 20/03/2020, the respondent No.1 filed suit for declaration and permanent injunction against the petitioners, claiming that they had no approach road available through his field bearing Gat No.58, to have access to their respective fields in Gat Nos. 57 and 59. Consequently, the respondent No.1 also sought an order restraining the petitioners for claiming such a right of way. In the said suit, the respondent No.1 also filed an application for temporary injunction.

6. On 06/10/2020, the Trial Court rejected the Application for temporary injunction, *inter-alia*, on the ground that an appeal filed by respondent No.1 against the common order of Tahsildar dated 31/07/2020, was pending before the Sub-Divisional Officer and that in the face of pendency of the appeal, the prayer for temporary injunction could not be entertained.

7. On 14/10/2020, the Sub-Divisional Officer dismissed the appeal filed by respondent No.1 and confirmed the common order dated 31/07/2020, passed by the Tahsildar in favour of the petitioners before this Court. The respondent No.1 had challenged the rejection of his Application for temporary injunction by filing the aforesaid appeal bearing M.C.A. No.33 of 2020, before the District Court at Akola. It is in this appeal that the impugned judgment and order was passed, whereby the order of the Trial Court was

set aside and the Application for temporary injunction (Exh.5) filed on behalf of respondent No.1 stood allowed in the following terms :

“ORDER

1) The appeal is hereby allowed with costs as under.

2) The impugned order dated 06.10.2020 passed in the application for temporary injunction (Exh.5) is hereby quashed and set aside and in its place the following order is substituted.

3) Pending the hearing and final disposal of the suit, defendant nos.3 to 7 themselves or through their agents, servants are temporarily restrained from claiming approach road / way for their respective field Gat Nos.57 and 59 from the field of plaintiff bearing Gat No.58 at village Hingna-Kumbhari.

4) Hearing of the suit is expedited.

5) (Copy of the order be sent to the learned trial court for information).”

8. The petitioners have filed the present Writ Petition challenging the said impugned judgment and order. Mr. Alok Daga, learned counsel appearing for the petitioners submits that the impugned judgment and order deserves to be set aside for the reason that the true purport of the provisions of the Mamlatdars' Courts Act and the Maharashtra Land Revenue Code has not been appreciated by the Appellate Court in the impugned judgment and order. It is further submitted that when the Tahsildar as well as the Sub-Divisional

Officer had found on facts that the petitioners were entitled to a direction for removal of obstruction by the respondent No.1 to have right of way and access through the field of the respondent No.1 in Gat No. 58, the respondent No.1 could not be said to have made out a case for grant of temporary injunction. It was further submitted that the reasoning of the Appellate Court in the impugned judgment and order was flawed as at the time of filing of the suit, the orders passed by the Tahsildar and Sub-Divisional Officer were yet to come into the existence, but, the subsequent developments had a strong bearing on the question of grant of temporary injunction. The sequence of events was not correctly appreciated in the impugned judgment and order, thereby showing that the impugned judgment and order deserved to be set aside.

9. Mr. M.G. Sarda, learned counsel appearing for the respondent No.1 submitted that a perusal of the claims made by the petitioners in their respective applications under the provisions of the aforesaid statutes would show that they had approached the authorities with a case that an access road existed through the field of the respondent No.1 Gat No. 58, which had been obstructed, giving them cause of action. Yet, while holding in favour of the petitioners the Tahsildar in the common order dated 31/07/2020, had wrongly held that it was appropriate to make a road available to the petitioners for access to their respective fields in Gat Nos.57 and 59 through the field of the respondent No.1 in Gat No.58, in the facts and

circumstances of the case.

10. The Sub-Divisional Officer also committed the same error, thereby indicating that the respondent No. 1 had a very strong case in his favour. Apart from this, by inviting attention of this Court to the map prepared during the preparation of spot inspection report and observations of the Appellate Court in the impugned judgment and order, it was brought to the notice of this Court that an alternative way is very much available to the petitioners and that, therefore, the balance of convenience clearly lies in favour of respondent No.1. On this basis, it was submitted that the impugned order deserved to be confirmed.

11. With the assistance of the learned counsel appearing for rival parties, this Court has perused the material available on record, particularly the orders passed by the respondent – Tahsildar and Sub-Divisional Officer, as also the map placed on record. The Court while considering an Application for temporary injunction is required to test the claims of the Applicant on the well known parameters of strong *prima facie* case, balance of convenience and possibility of grave and irreparable loss to the Applicant, in the event, the temporary injunction is not granted. The Courts below were expected to appreciate the rival contentions of the parties and material on record in the context of the aforesaid parameters.

12. A perusal of the impugned judgment and

order shows that the Appellate Court has appreciated the documents on record while considering the prayer of the respondent No.1 for grant of temporary injunction. While doing so, not only has the Appellate Court referred to the proceedings undertaken before the Tahsildar as well as Sub-Divisional Officer, but also, the relevant material brought on record in the aforesaid proceedings. The Appellate Court has found that prior to the petitioners raising their claims against the respondent No.1, another agriculturist having his agricultural field adjacent to Gat No.59 had also claimed right of existing way through Gat No.58, belonging to the respondent No.1 and that the claim made by the said agriculturist was rejected on the basis that an alternative way from the south side was available. The Appellate Court in the impugned judgment and order took into consideration the orders passed by the Tahsildar as well as Sub-Divisional Officer and found that the Trial Court had not appreciated the said order and the material available on record in the correct perspective, in order to ascertain whether the respondent No.1 had made out a case for grant of temporary injunction. While referring to such material in considerable detail, the Appellate Court has rendered findings in favour of respondent No.1, while reversing the order of the Trial Court and allowing temporary injunction application in the above-mentioned manner.

13. The question for consideration is, as to whether it can be said that the Appellate Court had

committed grave error in rendering such findings while allowing application for temporary injunction filed by the respondent No.1. A perusal of the order passed by the Trial Court rejecting the application would show that the pendency of the appeal before the Sub-Divisional Officer against the common order of the Tahsildar in favour of the petitioners appears to have influenced the opinion of the Trial Court. The question as to whether the respondent No.1 had made out his case on the afore-mentioned parameters was not dealt with by the Trial Court in the expected manner and this resulted in the Application for temporary injunction being rejected. The Appellate Court on the other hand has taken into consideration the material on record not only on the basis of the provisions of the aforesaid statutes and the orders passed in the proceedings initiated by the petitioners, but also from the perspective of the aforesaid three parameters to be applied while considering the question of grant of temporary injunction.

14. This Court has also appreciated the material on record and it appears *prima facie* that the respondent No.1 did place on record sufficient material to indicate that there was a strong case in his favour for grant of temporary injunction. The manner in which the Tahsildar passed the common order dated 31/07/2020, in favour of petitioners *prima facie* shows that a new way was created for the petitioners on the basis that absence of such access road would lead to hardships for the petitioners. It was not appreciated

that the petitioners themselves had approached the Tahsildar, claiming that such a way already existed, which had been suddenly obstructed by the respondent No.1. The Sub-Divisional Officer, while dismissing the appeal, appears to have proceeded on the very same basis on which the Tahsildar held in favour of the petitioners. This does indicate that the respondent No.1 had made out a *prima facie* case in his favour.

15. In so far as the aspects of balance of convenience and grave and irreparable loss are concerned, the map available on record and the observations made by the Appellate Court in paragraph 12 of the impugned judgment and order show that the petitioners appear to have an alternative way available to their respective fields located in Gat Nos.57 and 59. It is not as if the petitioners have been able to show convincingly that the findings rendered by the Appellate Court in the impugned judgment and order and the material available on record, including the aforesaid map can be said to be erroneous and wholly unsustainable. If that be so, the balance of convenience would certainly lean in favour of respondent No.1, particularly when in the absence of temporary injunction order, the petitioners would be having access to their fields in Gat Nos.57 and 59 through Gat No.58, belonging to the respondent No.1 during the pendency of the suit. This has a possibility of causing damage to the interest of the respondent No.1 and this Court is unable to appreciate the contention raised on behalf of the petitioners that such damage could be

compensated in terms of money, if eventually the suit stands decreed in favour of the respondent No.1

16. On an overall consideration of the material available on record, this Court is of the opinion that the impugned judgment and order passed by the Appellate Court cannot be said to be erroneous, deserving interference by exercise of writ jurisdiction. It is also relevant that in the impugned judgment and order itself the Appellate Court has directed that the hearing of the suit stands expedited.

17. In view of the above, it is found that the present writ petition is devoid of merits and accordingly it is dismissed. There shall be no order as to costs. Needless to say, the observations made in this order are limited to deciding the question of temporary injunction. The Trial Court shall proceed to decide the suit on merits uninfluenced by such observations.

JUDGE